


<b>UNITED STATES BANKRUPTCY COURT Southern District of New York</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: <b>Jennifer Convertibles</b>		Case Number: <b>10-13779</b>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): <b>Winfield Group</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <b>Julie Rome-Banks, Binder &amp; Malter LLP</b> <b>2775 Park Avenue</b> <b>Santa Clara, CA 95050</b>  Telephone number: <b>(408) 295-1700</b>		
Name and address where payment should be sent (if different from above): <b>Winfield Group, attn: Susan Benton</b> <b>10500 N.E. 8th Street, #850</b> <b>Bellevue, WA 98004</b>  Telephone number: <b>(425) 990-1209</b>		
1. Amount of Claim as of Date Case Filed: \$ <u>22,152.12</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier – 11 U.S.C. §507(a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan – 11 U.S.C. §507(a)(5).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. §507(a)(7).  <input type="checkbox"/> Taxes or penalties owed to governmental units – 11 U.S.C. §507(a)(8).  <input checked="" type="checkbox"/> Other – Specify applicable paragraph of 11 U.S.C. §507(a)(2).  Amount entitled to priority: \$ <u>5,084.10</u>  *Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
2. Basis for Claim: <u>Real Property Lease</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: _____  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: _____  Value of Property: \$ _____ Annual Interest Rate _____ %  Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____  Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of any payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: <u>10/15/10</u> Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <b>Susan Benton, Property Manager</b>		<b>FOR COURT USE ONLY</b>  <b>Jennifer Convertibles</b>  00239

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IN RE JENNIFER CONVERTIBLES, INC.  
Case No. 10-13779 (ALG)

Attachment to Proof of Claim of Winfield Group

1. Debtor Jennifer Convertibles, Inc., a Delaware corporation dba Jennifer Convertibles (hereinafter the "Debtor"), is a tenant of Winfield Group ("Creditor") at 944-B Blossom Hill Road, San Jose, California (hereinafter the "Subject Premises").

2. On or about March 1, 2004, Creditor leased to the Debtor the Subject Premises pursuant to a written Shopping Center Lease for a term of five (5) years (hereinafter the "Lease"). A true and correct copy of the Lease is attached hereto as Exhibit "A" thereto and is incorporated herein by reference. The Lease term commenced on July 1, 2004.

3. Pursuant to the terms of the Lease, the Debtor was initially required to pay to Creditor the sum of \$8,750.00 per month as and for the minimum monthly rental of the Subject Premises; said sum becomes due and payable on the first day of each month. A schedule for increases in the minimum monthly rental is contained in the Lease as follows:

Year	Dates	Minimum Monthly Rent
1	7-1-2004 to 6-30-2005	\$8,750.00
2	7-1-2005 to 6-30-2006	\$8,946.88
3	7-1-2006 to 6-30-2007	\$9,148.18
4	7-1-2007 to 6-30-2008	\$9,354.01
5	7-1-2008 to 6-30-2009	\$9,564.48

4. In addition to the Minimum Monthly Rent, the Debtor is obligated to pay its

1 proportionate share of real estate taxes and common area charges, which are both  
2 considered additional rent under the Lease. (See ¶8.1 and ¶11.4 of Lease.)

3 5. The Lease term expired on June 30, 2009. There have been no  
4 extensions or renewals of the Lease. Under California law, when a commercial lease  
5 expires, it converts to a month-to-month tenancy on otherwise identical terms to those  
6 contained in the written lease agreement. "If a lessee of real property remains in  
7 possession thereof after the expiration of the hiring, and the lessor accepts rent from  
8 him the parties are presumed to have renewed the hiring on the same terms and for the  
9 same time, *not exceeding one month* when the rent is payable monthly nor in any case  
10 one year." California Civil Code §1945.

11 6. On July 18, 2010, the Debtor filed a voluntary petition under chapter 11  
12 (the "Petition Date").

13 7. The Debtor has failed to pay to Creditor the following amounts that were  
14 due as of the Petition Date<sup>1</sup>:

Date	Description	Amount Due
Pre-Petition Arrears:		
6-1-10 to 6-30-10	Minimum rent	\$9,564.48
6-1-10 to 6-30-10	CAM	\$1,330.00
7-1-10 to 7-17-10	Minimum rent (pro rated) 17 days @ \$318.82 per day	\$5,419.87
7-1-10 to 7-17-10	CAM (pro rated) 17 days @ \$44.33 per day	\$753.67

25 <sup>1</sup> Although the Lease provides at §26.12 for a 5% late fee for any installment of  
26 rent not paid within a 10 day grace period, Movant has not historically charged the  
27 Debtor a late fee.

1	Date	Description	Amount Due
2		Total Pre-Petition Claim	\$17,068.02

3

4        7.        In addition, the Debtor has failed to pay Creditor the following amounts of

5 administrative rent that accrued after the Petition Date:

7	Date	Description	Amount Due
8	Post-Petition Arrears:		
9			
10	7-18-10 to 7-31-10	Minimum rent (pro rated) 14 days @ \$318.82 per day	\$4,463.48
11			
12	7-18-10 to 7-31-10	CAM (pro rated) 14 days @ \$44.33 per day	\$620.62
13			
14		Total	\$5,084.10

15        8.        As of the date of this Proof of Claim, the Debtor remains in possession of

16 the Subject Premises. Landlord reserves the right to amend this Proof of Claim to add

17 such additional amount of damages that result from the need to make any repairs or

18 clean up of the Premises, and any additional amounts of unpaid Rent or CAM, or any

19 other damages arising under the Lease or California law.

SHOPPING CENTER LEASE

BLOSSOM HILL CENTER

JENNIFER CONVERTIBLES  
944-B Blossom Hill Road  
San Jose, CA 95123  
408/\_\_\_\_-\_\_\_\_

EXHIBIT "A"

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#### EXHIBITS

- A. SITE PLAN
- B. LEGAL DESCRIPTION
- C. CONSTRUCTION PROVISIONS
- D. SIGNAGE CRITERIA
- E. OPENING AND TERMINATION DATE DECLARATION

SHOPPING CENTER LEASE

BLOSSOM HILL CENTER

THIS LEASE is made and entered into on this date March 1, 2004 between WINFIELD GROUP, a California partnership (hereafter "Landlord") and JENNIFER CONVERTIBLES, INC., a Delaware corporation, dba JENNIFER CONVERTIBLES (hereafter "Tenant").

A. DEMISE. Landlord hereby leases, demises and lets to Tenant, and Tenant hereby leases, hires and takes from Landlord those certain premises commonly known as 944-B Blossom Hill Road, San Jose, CA 95123 (the "Premises") described as follows:

That certain building or portion of a building, being part of Winfield Center in San Jose, California, (the "Shopping Center") described on Exhibit B, outlined in red on the Site Plan marked Exhibit A, containing approximately 3,500 square feet ("Tenant's Gross Leasable Area"), to be constructed by Landlord and Tenant in accordance with Article 9 hereof.

Tenant takes the Demised Premises subject to all applicable zoning, municipal, county and state laws, ordinances, rules, regulations, orders, restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the leased Premises. Lessee has conducted its own investigation and has relied entirely thereon and upon those of its agents, representatives and consultants in evaluating said conditions.

B. TERMS COVENANTS AND CONDITIONS. The parties agree that this Lease is made upon the following terms, covenants and conditions:

ARTICLE 1. BASIC TERMS

In all instances, the basic terms set forth in this Article 1 are subject to the main body of the Lease in general and those Articles noted in parentheses in particular.

1.1 Term

Term: Five (5) years (Art. 2)

1.2 Minimum Monthly Rent

Minimum Monthly Rent:

Year 1: \$8,750.00 per month  
Year 2: \$8,946.88 per month  
Year 3: \$9,148.18 per month  
Year 4: \$9,354.01 per month  
Year 5: \$9,564.48 per month

Rent to commence sixty (60) days after delivery of Premises to Tenant. (Art. 3)

1.3 Percentage Rent

Percentage Rent: (None) (Art. 4)

1.4 Security Deposit

Security Deposit: \$(None) (Art. 6)

1.5 Common Area Maintenance and Real Estate Taxes

Initial Monthly Payment for Common Area Maintenance and Real Estate Taxes: \$1,330.00; subject to adjustment and reconciliation as set forth in Articles 8 and 11.

(Art. 8/11)

1.6 Roof Reserve Fund

Roof Reserve Fund Contribution: \$(None)

(Art. 11)

1.7 (Intentionally Reserved)

1.8 Promotional Program

Initial Promotional Program Contribution: \$(None) (Art. 20)

1.9 Name of Business

Name of Business: Jennifer Convertibles

(Art. 4)

1.10 Hours of Operation

Hours of Operation: Minimum hours of operation shall be as determined appropriated by Landlord.

(Art. 4)

1.11 Premises Delivery Date

Tentative Premises Delivery Date: Upon Lease execution.

(Art. 9)

1.12 Use

Use: Retail sales of furniture, bedding, and related items as typically sold in Jennifer Convertibles stores. Notwithstanding any other provision hereof and provided Tenant is not in default beyond the applicable cure period of the terms and conditions of this Lease, Landlord agrees to not lease space within the Shopping Center to any other tenant whose primary use is the retail sales of sofas and sofa beds; provided, however, Tenant acknowledges that Landlord's existing leases, subject to existing uses and those that Landlord is required to permit, and any extensions thereof, with all other tenants of the Shopping Center, including any future successors in interest and/or assignees of such tenants, are specifically excluded from this exclusive usage right of Tenant. Tenant acknowledges and agrees that it is specifically prohibited from selling wood furnishings, area rugs and carpeting.

(Art. 5)

1.13 Radius Restriction

Radius Restriction: (None)

(Art. 4)

1.14 Contents of Lease

Articles 1 through 33, and Exhibits A, B, C, D, and E are attached to this Lease and are hereby incorporated herein by this reference.

ARTICLE 2. TERM

2.1 Term.

The term of the Lease shall commence on the date that the Premises are delivered to Tenant in accordance with Subsection 9.1 below and shall terminate at midnight on the

last day of the month following the number of years set forth in Subsection 1.1 after the Rent Commencement Date as defined in Subsection 3.1. The first "lease year" during the term hereof shall be the period commencing on the Rent Commencement Date if it occurs on the first day of a calendar month, or the first day of the next succeeding calendar month if the Rent Commencement Date occurs on any date other than the first day of a calendar month and shall terminate twelve (12) full calendar months thereafter. Immediately following delivery of the Premises to Tenant, or at any other time during the Lease Term, Tenant and Landlord shall execute an Opening and Termination Date Declaration in the form attached hereto as Exhibit E, specifying the information called for in said form.

2.2 Option to Renew. Provided that Tenant is not in default hereunder beyond the applicable cure period of the terms and conditions of this Lease, either at the time of exercising an option to renew or upon the commencement of any renewal term, Landlord hereby grants to Tenant the option to renew this Lease for two (2) additional terms of five (5) years each ("Renewal Terms") on the same terms and conditions as are provided for in the Lease, except for term, which shall be extended pursuant to this Subsection, and for Minimum Rent, which shall be:

First Renewal Term

Year 1: \$9,803.59 per month  
Year 2: \$10,048.68 per month  
Year 3: \$10,299.90 per month  
Year 4: \$10,557.40 per month  
Year 5: \$10,821.33 per month

Second Renewal Term

Year 1: \$11,118.92 per month  
Year 2: \$11,424.69 per month  
Year 3: \$11,738.87 per month  
Year 4: \$12,061.68 per month  
Year 5: \$12,393.38 per month

Each Renewal Term shall begin upon the expiration of the primary term or prior Renewal Term, as the case may be. The Renewal Terms set forth herein shall not be severable or separately assignable from this Lease. Tenant shall exercise a renewal option by delivering to Landlord written notice of its election to renew no later than one-hundred eighty (180) days prior to the expiration of the primary term or prior Renewal Term, as the case may be. Time is of the essence in the exercise of an option to renew, and Tenant's failure for any reason to exercise a renewal option within the time provided for herein shall constitute a waiver of Tenant's right to exercise such option.

ARTICLE 3. MINIMUM RENT

3.1 Minimum Monthly Rent. Tenant agrees to pay without offset or deduction of any kind the minimum monthly rent set forth in Subsection 1.2 above in advance at Landlord's address on the first day of each calendar month during the term of this Lease. Tenant's obligation to pay such rent shall commence on the Rent Commencement Date which is defined as the number of days set forth in Subsection 1.2 after the delivery of the Premises to Tenant. If the Rent Commencement Date is not the first day of a calendar month, the first month's rent shall be prorated on the basis of a thirty (30) day month and shall be payable with the first full monthly rental due hereunder.

Landlord's address shall be as set forth in Article 9 or as from time to time designated by Landlord to Tenant in writing.

#### ARTICLE 4. BUSINESS OPERATION, HOURS AND TRADE NAME

Tenant shall operate its business in the Premises with due diligence and efficiency so as to produce the maximum amount of gross sales which may be produced by such a manner of operation under the trade name specified in Subsection 1.9 and under no other name without Landlord's prior written consent. From and after the Rent Commencement Date, Tenant shall continuously conduct the business described in Subsection 5.1 hereof for such days and hours of operation as shall be designated by Landlord, which shall be at least those days and hours set forth in Subsection 1.10. Tenant acknowledges that uniform hours of operation are essential to the operation of the Shopping Center and agrees to pay as liquidated damages a sum equal to one-half (1/2) of the minimum daily rent in the event Tenant's business is not continuously open during designated hours on any day and equal to one (1) day's minimum rent for each day the Shopping Center is operating but Tenant's business fails to open. At all times, Tenant shall carry a full and complete stock of seasonable merchandise offered for sale at competitive prices and shall maintain adequate personnel for the efficient service of its customers, provided that during a reasonable period of time prior to the normal termination of the Lease term Tenant may commence winding up its business in an orderly fashion.

#### ARTICLE 5. USE OF PREMISES

5.1 Type of Business. The Premises shall be used and occupied only for the purposes described in Subsection 1.12 above, and for no other purposes without Landlord's prior written consent.

5.2 Prohibited Actions. Tenant shall not do or permit to be done in or about the Premises anything which is illegal or unlawful; or which is of a hazardous or dangerous nature. Tenant shall not cause, maintain or permit any nuisance in, on or about the Premises, or commit any waste therein or thereon. Tenant shall not allow refuse, garbage, or trash to accumulate outside of the Demised Premises. Tenant shall neither use nor permit the use of the Premises or any part thereof as living or sleeping quarters. Tenant shall not install or maintain any video, pinball or similar games in the Premises.

5.3 Interference With Other Tenants - Insurance Rate Increase. Tenant shall not do or permit to be done in or about the Premises anything which will increase the rate of or cause cancellation of, any insurance on the building of which the Premises are a part without Landlord's prior written consent. Tenant shall pay any increased costs occasioned by such action. Tenant shall not obstruct or interfere with the rights of any other tenants of the Shopping Center or their customers and invitees, nor injure or annoy them.

5.4 Tenant's Furniture, Equipment and Inventory. Tenant shall furnish, install and maintain in the Premises such trade fixtures, furniture, equipment and inventory reasonably appropriate to the conduct of Tenant's business.

5.5 Compliance With Laws. Tenant agrees that, at its own cost and expense, it will comply with and conform to all laws and ordinances and any and all lawful requirements and orders of any

properly constituted governmental board of authority, in any way relating to the use or occupancy of the Premises throughout the entire term of this Lease.

#### ARTICLE 6. SECURITY DEPOSIT

(Intentionally Deleted)

#### ARTICLE 7. UTILITIES

7.1 Tenant Responsibility. Tenant, at its own cost and expense, shall pay for all water, gas, heat, electricity, garbage disposal, sewer charges, telephone, and any other utility or service charge related to its occupancy of the Premises. If any such services are not separately metered to Tenant, Tenant shall pay a reasonable proportion, to be determined by Landlord, of all charges jointly metered with other premises. For any utility charges that are not separately metered, Tenant will not be required to pay any amount in excess of the amount that Tenant would be required to pay if purchasing directly from such utility provider. Landlord agrees to provide separately metered electric and gas utilities.

7.2 Damages Upon Interruption. Landlord shall not be liable in damages, consequential or otherwise, nor shall there be any rent abatement, arising out of any interruption or reduction whatsoever in utility services (I) which is due to fire, accident, strike, governmental authority, acts of God, or other causes beyond the reasonable control of Landlord or any temporary interruption in such service, (II) which is necessary to the making of alterations, repairs, or improvements to the Shopping Center or any part of it, or (III) which the Landlord deems necessary in order to conserve energy.

#### ARTICLE 8. REAL PROPERTY TAXES

8.1 Tenant Responsibility. Tenant shall pay as additional rent its proportionate share of all "Taxes" (as hereinafter defined) which may be levied, assessed or imposed against or become a lien upon the land, buildings and all other improvements in the Shopping Center. The term "Taxes" shall mean and include real estate taxes, assessments (special or otherwise) including impositions for the purpose of funding special assessment districts, water and sewer rents, rates and charges (including water and sewer charges which are measured by the consumption of the actual user of the item or service for which the charge is made), levies, fees (including license fees) and all other taxes, governmental levies and charges of every kind and nature whatsoever, (and whether or not the same presently exist or shall be enacted in the future) which may during the term be levied, assessed, imposed, become a lien upon or due and payable with respect to, out of or for:

(a) The Shopping Center or any part thereof, or of any land, building or improvements thereon, or the use, occupancy or possession thereof;

(b) Any interest of Landlord and/or Tenant (including any legal or equitable interest of Landlord or its mortgagee, if any) in the Premises or Shopping Center and/or the underlying realty or upon the Lease or any document to which Tenant is a party, creating or transferring, an interest or an estate in the Premises;

(c) Imposed or based upon or measured by the rents receivable by Landlord for the Shopping Center, including gross receipts taxes, business taxes, business and occupation taxes but excluding net income or excess profits taxes; and

(d) The ownership, leasing, operation, maintenance, alteration or repair of the Premises or Shopping Center.

"Taxes" shall also include interest on installment payments and all costs and fees (including reasonable attorney's and appraiser's fees) incurred by Landlord in contesting Taxes and negotiating with public authorities as to the same. If Landlord shall obtain any abatement, refund or rebate in Taxes for any year in which Tenant has paid Taxes under this Lease, Landlord shall promptly forward to Tenant its share of such abatement, refund or rebate (less Tenant's share of the reasonable cost and reasonable expense of obtaining them). Taxes shall not include, however, any franchise, estate, inheritance, corporation, transfer, net income or excess profits tax.

8.2 Tenant's Proportionate Share. Tenant's proportionate share of Taxes with respect to any tax fiscal year during the term hereof shall be that portion of the total of the Taxes assessed in any such tax fiscal year multiplied by a fraction, the numerator of which is the Gross Leasable Area of the Premises and the denominator of which is the total Gross Leasable Area of all buildings in the Shopping Center.

8.3 Payable Monthly - Actual Reconciliation. Commencing with the Rent Commencement Date, Tenant shall pay Landlord monthly, with each payment of minimum monthly rent, the amount set forth in Subsection 1.7 above as an impound toward its share of Taxes. Tenant's actual obligation for Taxes shall be determined and computed by Landlord not less often than annually and at the time each such computation is made, Landlord and Tenant shall adjust for any difference between impounded amounts and Tenant's actual share. At the time of each such computation, Landlord may revise the monthly payment for Taxes set forth in Subsection 1.7 above by written notification to Tenant. Tenant shall pay its share of Taxes, for both the Premises and the Common Areas, during each year of the Lease term. Landlord shall furnish such figures, computation and information as Tenant may reasonably request for the purpose of verifying the amounts charged to Tenant by Landlord. Landlord covenants and agrees that it shall timely and fully pay the real estate taxes and assessments levied against the Shopping Center and all improvements thereon.

8.4 Proration For Partial Years. If this Lease shall terminate on any date other than the last day of a tax fiscal year, the amount payable by Tenant during the tax fiscal year in which such termination occurs shall be prorated on the basis which the number of days from the commencement of said tax fiscal year to and including said termination date bears to 365. A similar proration shall be made for the tax fiscal year in which the term commences. The obligation of Tenant under this Article shall survive the termination of this Lease.

## ARTICLE 9. CONSTRUCTION AND ACCEPTANCE

9.1 Landlord's Substantial Completion. If this Lease is for premises subject to construction at the time of execution hereof, then Landlord agrees to notify Tenant when Landlord has substantially completed its construction obligations as specified

in Exhibit C attached hereto and incorporated by reference herein. The certification by Landlord's project architect that the Premises has been substantially completed with respect to Landlord's obligations shall be conclusive and binding upon the parties hereto.

If this Lease is for premises which are fully constructed at the time of execution hereof, then, except as specified in Exhibit C attached hereto and incorporated by reference herein, the Demised Premises are leased to Lessee "as is", without representation or warranty by the Lessor, and Lessee accepts the Premises in the condition existing as of the date of execution hereof.

9.2 Tenant's Work - Immediate Commencement. Tenant agrees, immediately upon the delivery of the Premises, substantially completed as provided in Subsection 9.1, to accept delivery of same and to thereupon immediately proceed, with due diligence and at its own expense, to install its trade fixtures and to perform "Tenant's Work" as designated in Exhibit C and such other work as it may deem necessary to open for the conduct of its business in the Premises. Notwithstanding anything to the contrary contained herein, delivery of possession of the Premises to Tenant shall in no event be deemed to have occurred until actual and exclusive physical possession of the Premises shall have been delivered to Tenant in a broom-clean condition, free and clear of all prior tenancies and free and clear of all movable fixtures and property of all prior tenants. Landlord represents that to the best of Landlord's knowledge, the Premises on the commencement date of this Lease, will contain no hazardous materials. Tenant agrees to undertake said work in compliance with Article 10 herein and further that it will comply with all government rules, regulations and ordinances relating to the installation of Tenant's trade fixtures and will fully pay for such work and will obtain insurance as specified in Article 15.

9.3 60-Day Notice of Defects. Tenant shall have a period of sixty (60) days from delivery of the Premises within which to notify Landlord in writing of any defects or nonconformance in Landlord's construction. In the event of Tenant's proper notice, Landlord shall promptly correct the defect or nonconformance. From and after said sixty (60) day period, Landlord shall have no obligation in regard to said construction except as otherwise provided by this Lease; and Landlord extends no warranties, express or implied, other than as stated above. Landlord shall not be liable for any damages caused because of delay in delivering possession of the Premises to Tenant.

9.4 Tenant's Opening. Tenant agrees to open its business in the Premises not later than the Rent Commencement Date described in Subsection 3.1 above.

#### ARTICLE 10. REPAIRS, MAINTENANCE AND ALTERATIONS

10.1 Landlord's Duties. Subject to reimbursement by Tenant as provided in Article 11 hereof, Landlord shall keep and maintain the roof (including the structural integrity thereof), foundation, floor slab, exterior, exterior walls, steel frame, structural portions, gutters, downspouts, if any, of the building in which the leased Premises are located (exclusive of doors, door frames, door checks, other entrances, windows and window frames which are not part of common areas, and storefronts) in good repair, and underground utility lines leading up to the Premises and the Building, and all utility lines leading up to



the Premises, provided that Landlord shall not be required to make any such repairs occasioned by the act or negligence of Tenant, its agents, employees, invitees, licensees or contractors. Tenant shall give Landlord prior written notice of any damage to the Premises requiring repair by Landlord. Landlord shall make all repairs and replacements without, to the extent practicable, interfering with the conduct of Tenant's business. If during such repairs and replacements Tenant, in its reasonable business judgement, is unable to conduct its business from the Premises, Minimum Rent and all additional rent shall be equitably abated until the earlier of such time as such repairs and replacements have been completed or Tenant is again able to conduct its business from the Premises.

Subject to reimbursement by Tenant as provided in Article 11 hereof, Landlord reserves the right to remodel the exterior of the buildings including but not limited to windows, doors, roofs, and exterior walls, when in Landlord's sole discretion it will result in the betterment of the Shopping Center.

10.2 Tenant's Duties. Except as provided in Subsection 10.1 hereof, Tenant shall, at its own expense, keep and maintain the Premises and every part thereof (including but not limited to electrical and plumbing fixtures and conduits, partitions, interior portions of outer walls, doors, door frames, door checks, other entrances, windows and window frames) in good order, condition and repair, and shall do such reasonable periodic painting of the interior thereof as may be required and approved by Landlord. Tenant shall keep its sewers and drains and the pipes leading therefrom not maintained by any governmental entity open and clear and shall keep the sidewalks and common areas adjacent to the Premises clean and free of debris. Any restroom located within the Premises will be maintained in a clean and sanitary manner and be made available for use by Tenant, its employees, invitees, customers and the general public, during normal business hours. Tenant shall reimburse Landlord on demand for the cost of damage to the Premises or the building caused by Tenant or its employees, agents or invitees. If Tenant shall fail to comply with the foregoing requirements, Landlord may (but shall not be obligated to) effect such maintenance and repair; and the cost thereof together with interest thereon at the maximum rate permitted by law shall be due and payable as additional rent to Landlord, together with Tenant's next rental installment.

10.3 Air Conditioning Contract. Tenant shall obtain, at its expense, a contract for the quarterly inspection and maintenance (including changing of filters, adjustment of belts and any other routine service as may be required) of the air conditioning and heating system and provide Landlord with a copy of said contract within twenty (20) days after Tenant opens for business. The contract shall be for the benefit of Landlord and Tenant and in a form and placed with a licensed contractor reasonably satisfactory to Landlord. Notwithstanding anything to the contrary contained herein, in the event repair of the air conditioning and heating system is required due to Tenant's, its employees' or contractors' negligence or Tenant's failure to provide for inspection and maintenance as required under this Subsection 10.3, Tenant shall directly reimburse Landlord for the costs of such repair.

10.4 Alterations. Tenant shall not make any alterations, changes or improvements in or to the Premises or any part thereof without first obtaining Landlord's written consent; and all of the same shall be at Tenant's sole cost, provided, however,

Tenant shall have the right, without consent of Landlord, to make interior, non-structural repairs and alterations provided disbursements do not exceed \$50,000.00 per annum for the first lease year and \$25,000.00 per annum per lease year thereafter. Landlord may impose as a condition of its consent such requirements as Landlord, in its sole discretion, may deem reasonable and desirable, including but not limited to, the requirement that Tenant utilize for such purposes only contractors, materials, mechanics and materialmen approved by Landlord. All alterations, additions, changes and improvements made by Tenant shall become the property of Landlord and a part of the realty and shall be surrendered to Landlord upon the expiration or sooner termination of the term hereof. Further, Landlord may designate by written notice to Tenant those alterations, additions and improvements which shall be removed by Tenant at the expiration or termination of the Lease; and Tenant shall promptly remove the same and repair all damage caused by such removal at its cost and with all due diligence.

10.5 Interior Layout. Tenant shall maintain the interior of its space in an attractive, orderly manner acceptable to Landlord. Tenant's fixtures, equipment, inventory and leasehold improvements shall be clean and neatly laid out. Said items shall not appear to be in need of repair or replacement, shall not be arranged in such a way as to give a cluttered appearance and shall generally be up to the standards set by the Landlord in its sole discretion for retail outlets in the Center.

#### ARTICLE 11. COMMON AREAS

11.1 Common Areas Defined - Landlord's Duties. Landlord agrees to operate and maintain during the term of this Lease, all Common Areas within the Shopping Center. The term "Common Areas" as used in this Lease shall include parking areas, roadways, walkways, driveways, delivery areas, landscaped areas, public restrooms, outside walls, roof, and other areas, facilities and improvements provided by Landlord for the convenience and use of tenants of the Shopping Center, their employees, customers and invitees. Tenant agrees to comply with and observe all reasonable rules and regulations established by Landlord from time to time for the Shopping Center.

11.2 Design and Operation of Common Area. The manner and method of operation, maintenance, service and repair of the Common Areas and the expenditures therefor, shall be in the sole and absolute discretion of Landlord. Landlord reserves the right from time to time to make changes in, additions to and deletions from the Common Areas and the purposes to which they are devoted. Landlord shall not permit any person to block the entrance of the Premises, impede ingress to or egress from the Premises, or place any obstruction in front of Tenant's storefront. Landlord shall not permit nor create any permanent, substantial, or adverse interference with access to or visibility of the Premises from the Common Areas upon which the front of the Premises abuts. Landlord warrants that at the delivery of the Premises to Tenant the roof is free of leaks and the sidewalk is free of the need of repair.

11.3 Tenant's Compliance With Rules. Tenant agrees to comply with such reasonable rules, regulations and charges for parking as Landlord may adopt from time to time for the orderly and proper operation of the Common Areas, including, without limitation, the restricting of employee parking to limited, designated areas and the removal, storage and disposal of refuse and rubbish. All rules and regulations that Landlord may make

shall be uniform, reasonable, and applied equally on a non-discriminatory basis to all of the tenants, complied with by all tenants, and shall not conflict with any provisions of this Lease. Upon Landlord's written request Tenant shall furnish a list of the automobile license numbers of the cars of Tenant's employees and shall thereafter notify Landlord of any changes within five (5) days after such changes occur. Landlord may tow away and charge Tenant towing fees for any car belonging to Tenant or its employees that is parked in any area other than that designated by Landlord, or Landlord may assess Tenant \$50.00 for each instance that a car belonging to Tenant or its employees is improperly parked and the same shall be deemed owing by Tenant as a part of the following month's minimum rent.

11.4 Common Area Expenses - Tenant's Obligation. During the term of this Lease, Tenant shall pay to Landlord, as additional rent, at the time and in the manner specified in Subsection 11.5 below, Tenant's prorata share of all costs and expenses of every kind and nature paid or incurred by Landlord in operating, policing, protecting, lighting, providing sanitation and sewer and other services for, insuring, repairing, replacing and maintaining the Common Areas and all buildings within the Shopping Center ("operating and maintenance costs").

Operating and maintenance costs shall include, but shall not be limited to, the following: outside wall and minor roof repairs; water, electricity and guard services; repairs and replacements of the air conditioning and heating system; salaries and wages (including employment taxes and so-called "fringe benefits") or maintenance contracts of all persons connected with the regular operation, servicing, repair and maintenance, premiums for liability, property damage and Workers' Compensation Insurance (which insurance Landlord, at all times during the Lease term, agrees to maintain); costs of on-site manager(s), if any, to administer the Shopping Center, including facilities occupied by such manager(s), salaries for such personnel, utilities, supplies, telephone, and all related expenses necessary for efficient operation; personal property taxes, if any; charges, excises, surcharges, fees or assessments levied by a governmental agency by virtue of the parking facilities furnished; costs and expenses of planting, replanting and relandscaping; garbage removal, if any; repairing and resurfacing the blacktop surfaces; repainting and restriping, repairing and maintaining landscaped areas, lighting, utilities, and parking bumpers; costs of Christmas decorations; a reasonable depreciation allowance on improvements, machinery and equipment used in connection with the Common Areas; fees for any licenses and/or permits required for operation of the Common Areas, or any part thereof; charges for all advertising and promotional costs or leasing an electronic message board, if any, for the Shopping Center; equipment rental; and a charge of fifteen percent (15%) of all "operating and maintenance costs" for administrative and overhead expenses. Excluded from operating and maintenance costs shall be replacement and repair of the air conditioning and heating system and roof replacement. Operating and maintenance costs shall not include (i) expenses for any capital improvements made to the Shopping Center or Buildings thereon (except that capital expenses for improvements which result in savings of labor or other costs shall be included at the cost of such improvements amortized over the useful life of the improvements); (ii) expenses for repairs or other work occasioned by fire, windstorm or other insured casualty; (iii) expenses incurred in leasing or procuring new tenants (by way of example, leasing commission, tenant inducements, advertising expenses and expenses of renovating space for new tenants); (iv) legal expenses in enforcing the terms of any lease; (v) interest or amortization

payments on any mortgage or mortgages and/or capital improvements; (vi) reserve funds (vii) expenses in connection with maintaining and operating any garage operated by Landlord incident to the operation of the Shopping Center; (viii) removal of hazardous material; and (ix) direct settlement payments by Landlord in personal injury or property claims. All operating and maintenance costs shall be reasonable and there shall be no duplication in charges whether by reason of the provision in this Lease setting forth Tenant's obligation to reimburse Landlord for operating and maintenance costs and/or any other provision herein.

11.5 Proration of Expense. Tenant's prorata share of the "operating and maintenance costs" described in Subsection 11.4 above shall be determined by multiplying the aggregate of such costs by a fraction, the numerator of which is the Gross Leasable Area of the Demised Premises, and the denominator of which is the total Gross Leasable Area of all buildings in the Shopping Center.

11.6 Monthly Payment of Estimate - Annual or Quarterly Adjustment. As additional rent, Tenant shall pay Landlord monthly a Common Area charge in an amount estimated by Landlord to be Tenant's share of the "operating and maintenance costs" on the first day of each month, commencing on the Rent Commencement Date and continuing on the first day of each month thereafter during the term hereof.

Landlord may adjust the monthly Common Area charge at the end of each calendar year or quarter on the basis of Landlord's anticipated costs for the following calendar year or quarter.

11.7 Year-End Accounting. Within forty-five (45) days after the end of each calendar year, Landlord shall furnish to Tenant a statement showing the total "operating and maintenance costs", Tenant's share of such costs, and the total of the monthly payments made by Tenant to Landlord during the calendar year just ended. At Landlord's election, Landlord may furnish to Tenant quarterly statements. All statements shall be certified by Landlord as being correct. Landlord shall keep good and accurate books and records in accordance with generally accepted accounting principles concerning the operation, maintenance and management of the Common Areas. Landlord shall keep for a period of two (2) years good and accurate books and records in accordance with generally accepted accounting principles concerning the operating and maintenance costs of the Common Areas; and Tenant and its agents shall have the right, once annually upon twenty (20) days written notice, to audit, inspect and copy such books and records at Landlord's principal place of business during normal business hours and conducted in a manner least apt to interfere with Landlord's business operations. Landlord shall not be responsible for the payment of any Tenant audit expenses that are based on a percentage of the amount recovered by the audit. Landlord will not be bound by Tenant's audit results or required to make payment as determined thereby, unless the audit is conducted by an independent certified public accountant named by Tenant and approved by Landlord, such approval not to be unreasonably withheld, and the findings of such accountant shall be binding upon both Tenant and Landlord. Any overbilling will be refunded to Tenant within thirty (30) days of written notification of such accountant's findings. In the event Landlord shall have been found to have overstated the operating and maintenance costs for the Shopping Center by three percent (3%), Landlord will pay the reasonable costs of such audit, otherwise Tenant shall pay all audit costs.

11.8 Reconciliation of Monies. If Tenant's share of the "operating and maintenance costs" for any annual or quarterly accounting period exceeds the payments made by Tenant, Tenant shall pay Landlord the deficiency within thirty (30) days after the receipt of Landlord's statement. If Tenant's payments made during the accounting period exceed Tenant's prorata share of the "operating and maintenance costs", Tenant may deduct the amount of the excess from the estimated payments next due to Landlord.

11.9 Roof Reserve. (Intentionally Deleted)

## ARTICLE 12. TRADE FIXTURES AND SURRENDER

12.1 Surrender. Upon the expiration or sooner termination of the term hereof, Tenant shall surrender the Premises including, without limitation, all apparatus and fixtures then upon the Premises, in as good condition as when received, reasonable wear and tear alone excepted, broom clean and free of trash and rubbish and, subject to Landlord's election set forth in Subsection 10.4, with all alterations, changes, additions and improvements which may have been made or installed from time to time either by Landlord or Tenant in, on or about the Premises. All of the same shall be the property of Landlord and shall be surrendered by Tenant without any injury, damage or disturbance thereto; and Tenant shall not be entitled to any payment therefor. Said property of Landlord shall include, without limitation, all lighting fixtures, fluorescent tubes and bulbs, and all partitions whether removable or otherwise.

12.2 Trade Fixtures, Furniture and Other Personal Property. Movable trade fixtures, furniture and other personal property installed in the Premises by Tenant at its cost shall be Tenant's property unless otherwise provided in this Lease and if not in default hereunder. Tenant shall remove all of the same prior to the termination of this Lease and at its own cost repair any damage to the Premises and the building caused by such removal. If Tenant fails to remove any of such property, Landlord may at its option retain such property as abandoned by Tenant and title thereto shall thereupon vest in Landlord; or Landlord may remove the same and dispose of it in any manner and Tenant shall, upon demand, pay Landlord the actual expense of such removal and disposition plus the cost of repair of any and all damage to said Premises and building resulting from or caused by such removal.

12.3 Merger and Subleases. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of the Landlord, terminate all or any existing subleases and subtenancies, or may, at Landlord's option, operate as an assignment to it of any or all such subleases or subtenancies.

12.4 Early Re-Entry. If, at any time during the last thirty (30) days of the term hereof, Tenant has removed all or substantially all of its aforesaid property from the Premises, Landlord shall thereafter have the right to enter said Premises for the purpose of altering, renovating and/or redecorating the same. Any such entry or work by Landlord shall not entitle Tenant to any abatement of rent or any other sum payable hereunder nor shall such entry or work be deemed an eviction or disturbance of Tenant's use and occupancy.

## ARTICLE 13. DAMAGE OR DESTRUCTION

13.1 Insured Damage. Except as otherwise provided in Subsection 13.2, if the Premises are damaged and destroyed by any casualty covered by Landlord's fire insurance policy, Landlord shall repair such damage as soon as reasonably possible, to the extent of the available proceeds, and the Lease shall continue in full force and effect.

13.2 Substantial Damage - Insufficient Proceeds. If the Premises are damaged or destroyed by any casualty covered by Landlord's fire insurance policy to such an extent as to render the same untenable in whole or substantial part, or to the extent of twenty-five percent (25%) or more of the replacement value of the Premises during the last twenty-four (24) months of the term herein, or if the insurance proceeds are not sufficient to repair the damage, or the Shopping Center is damaged to the extent of twenty percent (20%) or more (whether or not the Demised Premises are damaged), then Landlord may, at Landlord's option, either (I) repair such damage as soon as reasonably possible, in which event this Lease shall continue in full force and effect, or (II) cancel and terminate this Lease as of the date of the occurrence of such damage by giving Tenant written notice of Landlord's election to do so within ninety (90) days after the date of the occurrence of the damage.

13.3 Uninsured Damage. If at any time during the term herein the Premises are damaged and such damage was caused by a casualty not covered under Landlord's insurance policy specified in Subsection 15.2 hereafter, Landlord may, at its option, either (I) repair such damage as soon as reasonably possible at Landlord's expense, in which event this Lease shall continue in full force and effect, or (II) cancel and terminate this Lease as of the date of the occurrence of such damage, by giving Tenant written notice of Landlord's election to do so within thirty (30) days after the date of occurrence of such damage, in which event this Lease shall so terminate unless within thirty (30) days thereafter Tenant agrees to repair the damage at its cost and expense or pay for Landlord's repair of such damage.

13.4 Abatement of Rent. In the event of damage or destruction not caused by Tenant's fault or neglect, then and only then shall the minimum rent payable hereunder be proportionately reduced during the period of damage and any repair or restoration pursuant to this Article 13, said reduction to be based upon the extent to which the damage or the making of such repairs or restoration shall interfere with Tenant's business conducted in the Premises. In the event of damage or destruction caused by Tenant's failure or neglect, minimum rent shall continue unabated.

13.5 Damage to Tenant's Personal Property. Landlord shall in no event be required or obligated to repair, restore or replace any of Tenant's leasehold improvements, trade fixtures or any other property whatever installed in the Premises by Tenant.

#### ARTICLE 14. EMINENT DOMAIN

14.1 Taking of and Payment for All. If all or substantially all of the Premises shall be taken or appropriated by any public or quasi-public authority under the power of eminent domain, (or similar law authorizing the involuntary taking of private property, which shall include a sale in lieu thereof to a public body), either party hereto shall have the right, at its option, to terminate this Lease effective as of the date possession is taken by said authority; and Landlord shall be entitled to any and all income, rent, award and any

interest thereon whatsoever which may be paid or made in connection with such public or quasi-public use or purpose. Tenant hereby assigns to Landlord its entire interest in any and all such awards, and shall have no claim against Landlord for the value of any unexpired term of this Lease.

14.2 Taking of Portion of Premises. If only a portion of the Premises is taken, then this Lease shall continue in full force and effect and the proceeds of the award shall be used by Landlord to restore the remainder of the improvements on the Premises so far as practicable to a complete unit of like quality and condition to that which existed immediately prior to the taking, and the Minimum Rent shall be reduced in proportion to the floor area of the Premises taken. Landlord's restoration work shall not exceed the scope of work done by Landlord in originally constructing the Premises and the cost of such work shall not exceed the amount of the award received by Landlord.

14.3 Tenant's Damages. Nothing hereinbefore contained shall be deemed to deny to Tenant its right to claim from the condemning authority compensation or damages for its trade fixtures and personal property or for the loss of its Lease.

#### ARTICLE 15. INSURANCE

15.1 Tenant's Duties. Tenant shall, at all times during the term hereof, at its expense, carry and maintain occurrence claim based insurance policies in the amounts and in the form hereafter provided:

(a) Public Liability and Property Damage: Tenant shall procure and continue in force during the term of this Lease (including any period prior to the commencement date of the term of this Lease in which Tenant is engaged in any alterations or repairs to the Premises) Comprehensive Liability Insurance covering the following:

Commercial General Liability -		
Each Occurrence		\$1,000,000.00
Fire Damage (Any one fire)		50,000.00
Medical Expense (Any one person)		5,000.00
Personal & Adv Injury		1,000,000.00
General Aggregate		2,000,000.00
Products - Comp/Op Agg		1,000,000.00
Excess Liability -		
Each Occurrence		10,000,000.00
Aggregate		10,000,000.00

Property damage liability insurance with limits of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence. All such insurance shall specifically insure the performance by Tenant of the indemnity agreement as to liability for injury to or death of persons and loss of or damage to property contained in Article 17 hereof. Said insurance shall name Landlord as an additional insured, and shall provide that Landlord, although named as an insured shall nevertheless be entitled to recovery thereunder for any loss suffered by it, its agents, servants and employees by reason of Tenant's negligence. Said insurance shall be primary insurance as respects Landlord and not participating with any other available insurance.

(b) Plate Glass: Tenant shall, at its expense, carry and maintain plate glass insurance, or alternatively, Tenant may self-insure for plate glass.

(c) Tenant Improvements: Insurance covering all of Tenant's leasehold improvements, trade fixtures, merchandise and other personal property from time to time in the Premises in an amount not less than eighty percent (80%) of their full replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against sprinkler damage vandalism and malicious mischief. The proceeds of such insurance shall, so long as this Lease remains in effect, be used to repair or replace the property damaged or destroyed.

(d) Policy Form: All insurance to be carried by Tenant hereunder shall be in companies, on forms and with loss payable clauses reasonably satisfactory to Landlord and copies of such policies or certificates evidencing such insurance shall be delivered to Landlord within ten (10) days after delivery of possession of the Premises to Tenant and within thirty (30) days prior to the expiration date of each policy. No such policy shall be cancellable except after twenty (20) days advance written notice to Landlord. Tenant shall have the right to maintain required insurance under blanket policies provided that Landlord is named therein as an additional insured and that the coverage afforded Landlord will not be reduced or diminished by reason thereof.

15.2 Landlord's Duties - Casualty and Liability. Subject to reimbursement by Tenant as provided in Article 11 herein, Landlord shall obtain and keep in force during the term hereof, a policy or policies of insurance covering loss or damage to the Premises, providing protection against all perils included within the classification of fire, extended coverage, vandalism, and malicious mischief, together with an endorsement providing for rental income insurance covering a period of twelve (12) months covering minimum rental and all other leasehold expenses of Tenant hereunder, and, at Landlord's sole option, Landlord may obtain earthquake insurance.

Landlord shall procure such public liability and property damage insurance and such other insurance as in its sole discretion it deems reasonable and necessary for its protection with regard to the ownership and operation of the shopping center.

15.3 Landlord's Remedy; Tenant's Insurance. If Tenant shall fail to procure and maintain any insurance policy required herein, Landlord may (but shall not be obligated to) procure the same on Tenant's behalf, and the cost of same shall be due with the next installment of rent, together with interest at the maximum rate permitted by law.

#### ARTICLE 16. WAIVER OF SUBROGATION

Any insurance carried by either party with respect to the Premises and property contained in the Premises or occurrences related to them shall include a clause or endorsement denying to the insurer rights of subrogation against the other party to the extent rights have been waived by the insured prior to occurrence of injury or loss. Tenant shall upon request provide to Landlord written evidence from its insurer or insurance broker that such a clause is contained in Tenant's insurance policy. Each party, notwithstanding any provisions of this Lease to the contrary, waives any right of recovery against the other for injury or loss due to hazards covered by insurance containing such clause or endorsement.



#### ARTICLE 17. RELEASE AND INDEMNITY

17.1 Tenant's Indemnity. Tenant shall indemnify and hold harmless Landlord against and from any and all claims, actions, damages, liability and expenses, including attorneys' fees, arising from or out of Tenant's use of the Premises or from the conduct of its business or from any activity, work, or other things done, permitted or suffered by the Tenant in or about the Premises. Tenant shall further indemnify and hold Landlord harmless from any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of the Lease, or arising from any act or negligence of the Tenant, or any officer, agent, employee, guest, or invitee of Tenant, and from all costs, damages, attorneys' fees, and liabilities incurred in defense of any such claim of any action or proceeding brought thereon, including any action or proceeding brought against Landlord by reason of such claim. Tenant, as a material part of the consideration to Landlord, hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises, from any cause other than Landlord's negligence. Tenant shall give prompt notice to Landlord in case of casualty or accident in the Premises.

17.2 Landlord's Liability. Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise or property of Tenant, its employees, invitees or customers, or by any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water or rain which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures of the same, whether the said damage or injury results from conditions arising upon the Demised Premises or from other sources. Tenant shall further indemnify and hold Landlord harmless from any and all such claims and from all costs, damages, attorneys' fees, and liabilities incurred in defense of any such claim or any action or proceeding brought thereon, including any action or proceeding brought against Landlord by reason of such claim. Landlord shall not be liable for any damages arising from any act or neglect of any other tenant of the Shopping Center.

17.3 Landlord's Indemnity. Landlord shall indemnify and hold harmless Tenant against and from any and all claims, actions, damages, liability and expenses, including attorneys' fees, arising in connection with the Common Areas, provided such was not due to Tenant's negligence. Landlord shall further indemnify and hold Tenant harmless from any and all claims arising from any breach or default in the performance of any obligation on Landlord's part to be performed under the terms of the Lease, or arising from any act or negligence of the Landlord, or any agent, or employee of Landlord, and from all costs, damages, attorneys' fees, and liabilities incurred in defense of any such claim of any action or proceeding brought thereon, including any action or proceeding brought against Tenant by reason of such claim.

#### ARTICLE 18. INSOLVENCY, ETC. OF TENANT

18.1 Bankruptcy or Levy. The filing of any petition in bankruptcy whether voluntary or involuntary, or the adjudication of Tenant as a bankrupt or insolvent, or the appointment of a receiver or trustee to take possession of all or substantially all of Tenant's assets, or an assignment by Tenant for the benefit of its creditors, or any action taken or suffered by

Tenant under any State or Federal insolvency or bankruptcy act including, without limitation, the filing of a petition for or in reorganization, or the taking or seizure under levy of execution or attachment of the Premises or any part thereof, shall constitute a breach of this Lease by Tenant, and in any one or more of said events Landlord may at its option terminate this Lease by written notice to Tenant.

18.2 Transfer by Operation of Law. Neither this Lease nor any interest therein or thereunder, nor any estate thereby created in favor of Tenant, shall be an asset of Tenant in or under any bankruptcy, insolvency or reorganization proceeding, nor shall any of the same pass by operation of law under any State or Federal insolvency or bankruptcy law to any trustee, receiver, or assignee for the benefit of creditors or any other person whatever without Landlord's express written consent.

18.3 Damages. Landlord shall be entitled, notwithstanding any provision of this Lease to the contrary, upon re-entry of the Premises in case of a breach under this Article, to recover from Tenant as damages for loss of the bargain resulting from such breach, and not as a penalty, such amounts as are specified in Article 26, unless any statute governing the proceeding in which such damages are to be proved shall lawfully limit the amount thereof capable of proof, in which later event Landlord shall be entitled to recover as and for its damages the maximum amount permitted under said statute.

#### ARTICLE 19. PERSONAL PROPERTY AND OTHER TAXES

19.1 Tenant Personal Property and Business Taxes. Tenant shall pay, before delinquency, any and all taxes and assessments, sales, use, business, occupation or other taxes, and license fees or other charges whatever levied, assessed or imposed upon its business operations conducted in the Premises. Tenant shall also pay, before delinquency, any and all taxes and assessments levied, assessed or imposed upon its equipment, furniture, furnishings, trade fixtures, merchandise and other personal property in, on or upon the Premises.

19.2 Tenant Leasehold Improvement Taxes. Tenant shall pay all taxes and assessments levied, assessed or imposed on its leasehold improvements, regardless of whether such improvements were installed and/or paid for by Tenant or by Landlord, and regardless of whether or not the same are deemed to be a part of said building, but excluding only those improvements to the Premises which are a part of "Landlord's Work" as defined in Exhibit C hereto and were installed by Landlord.

19.3 Tenant Rental Taxes. Tenant shall pay (or reimburse Landlord therefor forthwith on demand) any excise tax, gross receipts tax, or any other tax however designated, and whether charged to Landlord, or to Tenant, or to either or both of them, which is imposed on or measured by or based on the rentals to be paid under this or any estate or interest of Tenant, or any occupancy, use or possession of the Premises by Tenant.

19.4 Landlord Taxes. Nothing hereinabove contained in this Article shall be construed as requiring Tenant to pay any inheritance, estate, succession, transfer, gift, franchise, income or profits tax or taxes imposed upon Landlord.

## ARTICLE 20. SIGNS AND PROMOTIONS

20.1 Exterior Sign Design and Approval. Tenant shall have the right, or Landlord may require Tenant, to install, maintain and replace on the store, such signs in accordance with the sign criteria attached hereto as Exhibit D as may be reasonably necessary for commercial identification in a manner aesthetically compatible with the Shopping Center, provided that erection of such signs by Tenant shall first have been approved by Landlord and by applicable governmental authorities. Tenant acknowledges that the signage is a critical aspect in the success of the Shopping Center. Tenant shall pay all costs relating to the construction, installation, maintenance and repair of its signs. Tenant shall have no right to erect a pole sign. Tenant shall have the right to utilize the currently available westbound and eastbound panels of the project monument sign at no additional rent. The sign panel design shall be subject to Landlord's prior written approval, and Tenant shall be responsible for the cost of fabricating, installing, maintaining, and removal of the sign panels.

20.2 Exterior and Interior Sign Prohibitions. Tenant shall not place, construct or maintain on the store windows, doors or exterior walls or roof of the Premises or any interior portions that may be visible from the exterior of the Premises, any signs, advertisements, names, trademarks or other similar item without Landlord's consent; but in no event will Landlord consent to window signs that occupy more than ten percent (10%) of window area, provided, however, Tenant may place Tenant's standard, appropriate dignified displays of Tenant's customary type for its display windows on the interior of the window area or elsewhere on the Premises so as to be visible to the public as may be allowed by law. Tenant shall be permitted a "relocating sign" during the last sixty (60) days of the lease term provided such sign has been approved in writing by Landlord. Landlord at Tenant's cost may remove any item so placed or maintained which does not comply with the provisions of this Paragraph.

20.3 Billboard Signs. In the event Landlord elects to procure outdoor billboard advertising identifying the Shopping Center, Tenant agrees to pay Landlord its prorata share of the cost of such advertising, computed as provided in Subsection 11.5.

20.4 Merchants' Association. (Intentionally Deleted)

20.5 Name of Center. Tenant agrees that when mentioning the Shopping Center in any of its advertising in any form of media it shall refer to said Shopping Center as Blossom Hill Center. Tenant shall not have or acquire any property right or interest in the name of the Shopping Center and Landlord reserves the right to change said name upon notice to Tenant. Tenant waives all claims for damages caused by any such change.

## ARTICLE 21. ASSIGNMENT AND SUBLETTING

21.1 Assignment or Sublease - Consent Required. Tenant shall not voluntarily, involuntarily, or by operation of law assign, transfer, hypothecate, or otherwise encumber this Lease or Tenant's interest therein, and shall not sublet nor permit the use by others of the Premises or any part thereof without first obtaining in each instance Landlord's written consent, which shall not be unreasonably withheld, conditioned, or delayed. If consent is once given by Landlord to any such assignment, transfer, hypothecation or subletting, such consent shall not

operate as a waiver of the necessity for obtaining Landlord's consent to any subsequent assignment, transfer, hypothecation or sublease. Any such assignment or transfer without Landlord's consent shall be void and shall, at Landlord's option, constitute a material breach of this Lease. This Lease shall not, nor shall any interest therein, be assignable as to Tenant's interest by operation of law, without Landlord's express prior written consent.

Notwithstanding the above, no consent shall be required for, and Tenant shall have the right to make, any assignment, transfer or subletting of the Premises, or any part thereof (i) to a parent, subsidiary or affiliated company, (ii) directly or indirectly, in any manner, in connection with a merger, or a consolidation or a combination, or a sale of substantially all of the assets constituting a material portion and/or all of the retail chain of which the business in the Premises is a part in the State of California and Tenant shall remain fully liable for the full performance of all obligations under this Lease. Tenant agrees to notify Landlord in writing thirty (30) days prior to any such assignment, transfer or subletting of the Premises.

Tenant shall have the right to assign, sublet or otherwise transfer its interest in this Lease to a Licensee, Franchisee or operating subsidiary of Tenant without Landlord's approval and Tenant shall remain fully liable for the full performance of all obligations under this Lease. Tenant agrees to notify Landlord in writing thirty (30) days prior to any such assignment, transfer or subletting of the Premises.

21.2 Reasonable Refusal of Consent. The consent of Landlord required under Subsection 21.1 above shall not be unreasonably withheld. Should Landlord withhold its consent for any of the following reasons, the withholding shall be deemed to be reasonable:

(a) Conflict or incompatibility of the proposed use (which must be a use authorized by Subsection 5.1) with other uses in the Shopping Center;

(b) Financial inadequacy of the proposed sublessee or assignee;

(c) A proposed use (which must be a use authorized by Subsection 5.1) which would diminish the reputation of the Shopping Center or the other businesses located therein;

(d) The unsuitability of percentage rent clause for the proposed new assignee or subtenant;

(e) A proposed use (which must be a use authorized by Subsection 5.1) whose impact on the common facilities of the other tenants in the Shopping Center would be disadvantageous.

21.3 Assumption of Liability With Tenant Required. Each assignee or transferee shall assume and be deemed to have assumed this Lease and shall be and remain liable jointly and severally with Tenant for the payment of all rents due hereunder, and for the due performance during the term of all the covenants and conditions herein set forth by Tenant to be performed. No assignment or transfer shall be effective or binding on Landlord unless said assignee or transferee shall, concurrently, deliver to Landlord a recordable instrument which contains a covenant of assumption by said assignee or transferee; provided that a failure or refusal to so execute said instrument shall not

release or discharge the assignee or transferee from its liability aforesaid.

21.4 Transfer of Interest in Entity - Assignment. If Tenant is not a publicly traded corporation, or if Tenant is an unincorporated association or a partnership, the transfer, assignment, or hypothecation by one or more persons and/or entities of any stock or interest in such corporation, association or partnership in excess of fifty percent (50%) shall be deemed an assignment within the meaning of this Article.

21.5 Notice and Information Required From Tenant. If Tenant intends to assign this Lease or any interest therein, sublet all or any part of the Premises, Tenant shall give prior written notice to Landlord of each such proposed assignment or subletting specifying the proposed assignee or subtenant and the terms of such proposed assignment or sublease and the use to which the Premises will be put. Said notice shall be accompanied by the proposed assignee's or sublessee's certified financial statement, business plan, and proforma statement of the business to be operated. Landlord shall, within thirty (30) days thereafter, notify Tenant in writing either, that it consents (subject to any conditions of consent that may be imposed by Landlord) or does not consent to such transaction.

21.6 Division of Excess Payment. In the event of an approved assignment or subletting pursuant to this Article 21, Tenant shall assign to Landlord one-half of all consideration paid to Tenant directly or indirectly for the assignment by Tenant of its leasehold interest, and 50% of any and all subrentals payable by sublessees to Tenant which are in excess of the minimum monthly rental payable by Tenant hereunder. Notwithstanding any other provision hereof, in the event of an approved assignment or subletting, and in the event of a breach of this Lease by Tenant, the Landlord, at Landlord's option, shall have the right to require any sublessees to make rental payments, and all other payments as required under the Lease, directly to Landlord.

21.7 Landlord's Costs and Attorneys' Fee. Tenant agrees to reimburse Landlord for Landlord's reasonable costs and attorneys' fees incurred in connection with the processing and documentation of any requested assignment, transfer, hypothecation or subletting of this Lease aforesaid.

#### ARTICLE 22. ENTRY RIGHTS RESERVED BY LANDLORD

Subject to Tenant's security requirements, upon reasonable prior notice, Tenant shall permit Landlord or its agents to enter the Premises at reasonable times for the purpose of:

(a) Inspection of the Premises and/or the building of which it is a part as well as all equipment used in connection therewith;

(b) Making repairs and/or remodeling the Premises and/or the building of which it is a part;

(c) Showing the Premises to persons wishing to purchase or make a mortgage loan upon the same;

(d) Posting notice of non-responsibility;

(e) Posting "For Lease" signs and showing the Premises to persons wishing to rent the Premises during the last six (6) months of the term of this Lease.

Whenever Landlord or its agents shall enter, or perform any work in or about the Premises, such entry shall be made, and such work shall be performed, to the extent practicable, without interfering with the conduct of Tenant's business.

#### ARTICLE 23. CONSENT OF LANDLORD

Whenever Landlord's consent or approval is required prior to any action under this Lease, in no event shall Landlord be liable in monetary damages for withholding its consent or approval unless Tenant proves the same to have been withheld maliciously or in bad faith.

#### ARTICLE 24. RIGHT OF LANDLORD TO PERFORM

All covenants to be performed by Tenant hereunder shall be performed by Tenant at its sole cost and expense and without any abatement of any rent to be paid hereunder. If Tenant shall fail to pay any sum, other than rent, required to be paid by it or shall fail to perform any other act on its part to be performed, and such failure shall continue beyond the applicable grace period set forth in Article 26, Landlord may (but shall not be obligated to) and without waiving or releasing Tenant from any of its obligations, make any such payment or perform any such other act on Tenant's part to be made or performed as herein provided. All sums so paid by Landlord and all necessary incidental costs, together with interest at the maximum lawful rate per annum from the date of such payment by Landlord shall be payable by Tenant forthwith on Landlord's demand therefor. In the event of nonpayment thereof by Tenant, Landlord shall have, in addition to all other rights and remedies, the same rights and remedies as in the case of default by Tenant in the payment of rent.

#### ARTICLE 25. LANDLORD DEFAULT

25.1 Notice to Landlord. If Landlord shall be in default of any covenant of this Lease to be performed by it, Tenant, prior to exercising any right or remedy it may have against Landlord on account thereof, shall give Landlord a thirty (30) day written notice of such default, specifying the nature of such default. Notwithstanding anything to the contrary elsewhere in this Lease, Tenant agrees that if the default specified in said notice is of such nature that it can be cured by Landlord, but cannot with reasonable diligence be cured within said thirty (30) day period, then such default shall be deemed cured if Landlord within said thirty (30) day period shall have commenced the curing thereof and shall continue thereafter with all due diligence to cause such curing to proceed to completion. Notwithstanding anything to the contrary in the Lease, if, upon thirty (30) days notice from Tenant, except in the case of an emergency, Landlord fails to commence and diligently proceed to make any repairs that this Lease requires it to make, then Tenant may make those repairs and the reasonable cost thereof shall be paid by Landlord upon Tenant's demand.

25.2 Landlord's Liability. If Landlord shall fail to cure a default of any covenant of this Lease to be performed by it and, as a consequence of such uncured default, Tenant shall

recover a money judgment against Landlord, such judgment shall be satisfied solely out of the proceeds of sale received upon execution of such judgment against the right, title and interest of Landlord in the building and its underlying realty and out of the rents, or other income from said property receivable by Landlord, or out of the consideration received by Landlord's right, title and interest in said property, but neither Landlord nor any partner or joint venture of Landlord shall be personally liable for any deficiency.

#### ARTICLE 26. DEFAULT AND REMEDIES

26.1 Events of Default. The occurrence of any of the following shall constitute a material breach and default of this Lease by Tenant:

(a) Any failure by Tenant to pay when due any of the rent required to be paid by Tenant hereunder where such failure continues for five (5) business days following written notice to Tenant;

(b) A failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant where such failure continues for thirty (30) days after written notice thereof from Landlord; provided, that if the nature of such default is such that the same cannot with due diligence be cured within said period, Tenant shall not be deemed to be in default if it shall within said period commence such during and thereafter diligently prosecutes the same to completion;

(c) The abandonment or vacation of the Premises.

26.2 Damages Upon Termination. In the event of any default as aforesaid by Tenant, then in addition to any and all other remedies available to Landlord at law or in equity, Landlord shall have the right to immediately terminate this Lease and all rights of Tenant hereunder by giving written notice to Tenant of its election so to do. If Landlord shall elect to terminate this Lease, then it may recover from Tenant:

(a) The worth at the time of the award of the unpaid rent, assessments, and charges payable hereunder which had been earned at the date of such termination; plus

(b) The worth at the time of the award of the amount by which the unpaid rent, assessments, and charges which would have been earned after termination and until the time of the award exceeds the amount of such rental loss which Tenant proves could have been reasonably avoided; plus

(c) The worth at the time of the award of the amount by which the unpaid rent for the balance of the term after the time of the award exceeds the amount of such rental loss which Tenant proves could be reasonably avoided; plus

(d) Any other amounts necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations hereunder or which, in the ordinary course of affairs, would likely result therefrom; and

(e) At Landlord's election, such other amounts in addition to or in lieu of the foregoing as may be permitted by applicable California law from time to time.

26.3 "Worth at the Time." As used in subparagraphs (a) and (b) above, the "worth at the time of the award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in subparagraph (c) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award plus one percent (1%).

26.4 Removal of Personal Property. In the event of any default aforesaid by Tenant, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Demised Premises and remove all property and persons therefrom, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant.

26.5 Remedy Upon Re-Entry Without Termination. If Landlord shall elect to re-enter as above provided or shall take possession of said Premises pursuant to legal proceedings or pursuant to any notice provided by law, and if Landlord has not elected to terminate this Lease, Landlord may either recover all rental as it becomes due or relet the Demised Premises or any part or parts thereof for such term or terms and upon such provisions as Landlord, in its sole judgment, may deem advisable and shall have the right to make repairs to and alterations of the Demised Premises.

26.6 Application of Rentals Upon Reletting. If Landlord shall elect to relet as aforesaid, then rentals received by Landlord therefrom shall be applied as follows:

(a) To the payment of any indebtedness other than rent due hereunder from Tenant;

(b) To the payment of all costs and expenses incurred by Landlord in connection with such reletting; and

(c) To the payment of rent due and unpaid hereunder and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder.

In no event shall Tenant be entitled to any excess rental received by Landlord over and above that which Tenant is obligated to pay hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable hereunder during that month by Tenant, then Tenant shall pay such deficiency to Landlord forthwith upon demand, and said deficiency shall be calculated and paid monthly. Tenant shall also pay Landlord as soon as ascertained and upon demand, all costs and expenses incurred by Landlord in connection with such reletting and in making any such alterations and repairs which are not covered by the rentals received from such reletting.

26.7 Re-Entry Not Termination. No re-entry or taking possession of the Premises by Landlord under this Article shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof be adjudged by a court of competent jurisdiction. Notwithstanding any reletting without termination by Landlord because of Tenant's default, Landlord may at any time after such reletting elect to terminate this Lease because of such default.

26.8 Landlord's Right to Damages and Indemnification Preserved. Nothing contained in this Article shall constitute a



waiver of Landlord's right to recover damages by reason of Landlord's efforts to mitigate the damages to it caused by Tenant's default; nor shall anything in this Article adversely affect Landlord's right, as in this Lease elsewhere provided, to indemnification against liability for injury or damage to persons or property occurring prior to a termination of this Lease. Landlord agrees to use commercially reasonable efforts to mitigate damages.

26.9 Attorneys' Fee. If Landlord shall retain an attorney for the purpose of collecting any rental due from Tenant, Tenant shall pay the reasonable fees of such attorney for his services regardless of the fact that no legal proceeding or action may have been filed or commenced.

26.10 Interest. Any unpaid rent and any other sums due and payable hereunder by Tenant shall bear interest at the maximum lawful rate per annum from the due date and until payment thereof, but in no event greater than twelve percent (12%).

26.11 "Rent" and "Rental." The terms "rent" and "rental" as used herein and elsewhere in this Lease shall be deemed to be and mean the minimum rent, all additional rents, rental adjustments, taxes, and utilities and any and all other sums, however designated, required to be paid by Tenant hereunder.

26.12 Late Charges. Tenant acknowledges that late payment by Tenant to Landlord of rent will cause Landlord to incur costs not contemplated by this Lease, the exact amount of such costs being extremely difficult and impracticable to fix. Such costs include, without limitation, processing and accounting charges, and late charges that may be imposed on Landlord by the terms of any encumbrance and note secured by any encumbrance covering the Premises. Therefore, if any installment of rent due from Tenant is not received by Landlord within ten (10) days following written notice to Tenant, Tenant shall pay to Landlord an additional sum of five percent (5%) of the overdue rent as a late charge. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Landlord will incur by reason of late payment by Tenant. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to the overdue amount, nor prevent Landlord from exercising any of the other rights and remedies available to Landlord.

26.13 Guaranteed Payment. Tenant agrees that in the event Tenant makes any payment to Landlord by check or draft which as a result of any act or omission of Tenant causes said instrument to be non-negotiable by Landlord in the normal course of its business, Landlord may at its option demand that all future payments to Landlord from Tenant be made by certified or cashier's check or by money order. In the event Tenant is more than ten (10) days late twice during any six (6) month period in paying any rental obligation required under this Lease, at Landlord's option, all future rental obligations shall become due and payable quarterly in advance.

26.14 Additional Remedies and Waivers. The rights and remedies of either party set forth herein shall be in addition to any other right and remedy now or hereinafter provided by law, and all such rights and remedies shall be cumulative. No action or inaction by either party shall constitute a waiver of a Default and no waiver of default shall be effective unless it is in writing.

ARTICLE 27. PRIORITY OF LEASE AND ESTOPPEL CERTIFICATE

27.1 Priority of Lease. At Landlord's election, this Lease shall be either superior to or subordinate to any and all trust deeds, mortgages, or other security instruments, ground leases, or lease-back financing arrangements which may hereafter be executed covering the Premises and/or the land underlying the same or any part or parts of either thereof, and for the full amount of all advances made or to be made thereunder together with interest thereon, and subject to all the provisions thereof, all without the necessity of having further instruments executed by Tenant to effectuate the same. Tenant agrees to execute, acknowledge and deliver upon request by Landlord any and all documents or instruments which are or may be deemed necessary or proper by Landlord to more fully and certainly assure the superiority or the subordination of this Lease and to any such trust deeds, mortgages or other security instruments, ground leases, or lease-backs. Provided, that if this Lease shall be subordinate, any person or persons purchasing or otherwise acquiring any interest at a foreclosure sale under said trust deed, mortgages or other security instruments, or by termination of said ground leases or lease-backs, shall continue this Lease in full force and effect in the same manner as if such person or persons had been named as Landlord herein.

This Lease shall continue in full force and effect as aforesaid, and Tenant shall automatically become the tenant of Landlord's successor in interest and shall attorn to said successor in interest. If requested, Tenant shall execute an attornment agreement satisfactory in form to said successor in interest. Failure on the part of Tenant to execute such agreement within twenty (20) days will be a material breach of this Lease. The words "person" and "persons" as used herein or elsewhere in this Lease shall mean individuals, partnerships, firms, associations and corporations.

27.2 Modifications Required by Lender. It is understood by Tenant that during the term of this Lease, Landlord may place new or additional financing upon the Shopping Center and in that event, this Lease must be approved by the financing institution making such loans. Accordingly, if any such financial institution requires, as a condition to making of its loan, any non-substantive modification of this Lease, Tenant agrees to enter into an agreement so modifying this Lease. In the event Tenant refuses on the grounds that the modification is substantive, then that issue only shall be arbitrated through the offices of the American Arbitration Association under the rules and guidelines of that association as then existing, with each party to bear its own costs incurred therein, and to share one-half of the mutually incurred arbitration costs. If it is determined by such arbitration that Tenant is required to enter into such amendment and if Tenant refuses to execute such amendment within ten (10) days after such determination, then Landlord shall have the right, in addition to any other remedies it may have at law or in equity, by giving written notice to Tenant, to terminate this Lease.

27.3 Estoppel Certificate. Tenant shall at any time and from time to time execute, acknowledge and deliver to Landlord, within ten (10) days after Landlord's request therefor, a written statement certifying as follows:

(a) That this Lease is unmodified and in full force (or if there has been modification thereof, that the same is in full force as modified and stating the nature thereof);

(b) That to the best of its knowledge, there are no uncured defaults on the part of Landlord (or if any such default exists, the specific nature and extent thereof);

(c) The date to which any rents and other charges have been paid in advance, if any. Failure on the part of Tenant to execute such statement within twenty (20) days will be a material breach of this Lease.

#### ARTICLE 28. HOLDING OVER

If, without the execution of a new Lease or written extension of this Lease, and with the consent of Landlord, Tenant shall hold over after the expiration of the term of this Lease, then Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month, which tenancy may be terminated as provided by law. During said tenancy, the minimum rent payable to Landlord by Tenant shall be one hundred twenty percent (120%) of the minimum rental set forth in Article 3 of this Lease, unless a different rate is agreed upon, and upon all of the other terms, covenants and conditions set forth in this Lease so far as the same are applicable. Provided that if Tenant shall fail to surrender the Premises upon the termination of this Lease, in addition to any other liabilities to Landlord arising therefrom, Tenant shall and does hereby agree to indemnify and hold Landlord harmless from loss or liability resulting from such failure including, but not limited to, claims made by any succeeding tenant founded on such failure.

#### ARTICLE 29. NOTICES

Wherever in this Lease it shall be required or permitted that notice, approval, advice, consent or demand be given or served by either party to this Lease to or on the other, the same shall be given or served, and shall not be deemed to have been duly given or served unless in writing and forwarded by nationally recognized courier or certified or registered mail, addressed to the addresses of the parties as specified herein. Notice shall be deemed given when so mailed and addressed. Either party may change such address by written notice forwarded by certified or registered mail to the other.

LANDLORD: WINFIELD GROUP  
225 108th Avenue N.E., Suite 520  
Bellevue, WA 98004  
425/990-1200

TENANT: JENNIFER CONVERTIBLES, INC.  
419 Crossway Park Drive  
Woodbury, NY 11797  
516/496-1900

With a copy to:  
Law Offices of Wincig & Wincig  
Attn: Bernard Wincig, Esq.  
574 Fifth Avenue  
New York, NY 10036  
212/575-8333

#### ARTICLE 30. LIENS

30.1 No Liens Permitted. Tenant shall pay all costs for work done by it or caused to be done by it in the Premises and

Tenant shall keep both said Premises and the Shopping Center free and clear of all mechanics' liens and other liens on account or work done for Tenant or persons claiming under it. Tenant agrees to and shall indemnify and hold Landlord harmless against liability, loss, damage, costs, attorneys' fees, and any other expenses on account of claims of lien of laborers or materialmen for work performed or materials or supplies furnished for Tenant or persons claiming under it. Tenant shall take all steps as Landlord may direct, including the furnishing of a bond or bonds, to insure the protection of Landlord, the Premises, and the building from loss by virtue of any such lien.

30.2 Tenant's Bond on Contest. If Tenant shall desire to contest any claim of lien, it shall furnish Landlord adequate security in the amount of the claim, plus estimated costs and interest or a bond of a responsible corporate surety in that amount conditioned on discharge of the lien. Tenant shall pay and satisfy forthwith any final judgment entered which establishes the validity or existence of a lien.

30.3 Landlord's Right to Pay Lien Claim. If Tenant shall not have paid a charge for which a mechanics' lien claim and suit to foreclose the same have been filed, and shall not have given the security aforesaid, Landlord may (but shall not be obligated to) pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith shall be immediately due and owing from Tenant to Landlord as additional rent, together with interest at the maximum lawful rate from the date of Landlord's payment thereof.

30.4 Notice Prior to Commencement of Work. Tenant shall, at least ten (10) days prior to commencing any work which might result in a lien as aforesaid, give Landlord written notice of its intention so to do to enable Landlord to post, file and record legally effective notice of nonresponsibility. Landlord or its representatives shall have the right to enter into the Demised Premises and inspect the same at all reasonable times, and shall have the right to post and keep posted thereon said notices of nonresponsibility and such other notices as Landlord may deem proper to protect its interest therein.

#### ARTICLE 31. QUIET ENJOYMENT

Landlord agrees that Tenant, except as otherwise provided herein, upon payment of rent, additional rent, and all other sums and charges required to be paid by Tenant hereunder, and the due and punctual performance of all of Tenant's other covenants and obligations under this Lease, shall have the quiet and undisturbed possession of the Premises.

#### ARTICLE 32. ATTORNEYS' FEES

Should either party hereto institute any action or proceeding in court or in arbitration to enforce any provision hereof or for damages or for declaratory or other relief hereunder, the prevailing party shall be entitled to receive from the losing party, in addition to court and arbitration costs, such amount as the court or arbitrator shall adjudge to be reasonable as attorneys' fees for services rendered to said prevailing party, and said amount may be made a part of the judgment or decision against the losing party.

### ARTICLE 33. MISCELLANEOUS

33.1 No Partnership or Joint Venture. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between Landlord and Tenant or between Landlord and any other party, or cause Landlord to be in any manner responsible for the debts or obligations of Tenant, or any other party.

33.2 Separation of Provisions - Construction of Lease. If any provision of this Lease shall be determined to be void or voidable by any court of competent jurisdiction, such determination shall not affect any other provision of this Lease and all such other provisions shall remain in effect. It is the intention of the parties hereto that if any provisions of this Lease is capable of two constructions, one of which would render the provision void or voidable and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

33.3 Corporate Representatives. If Tenant hereunder is a corporation, the parties executing this Lease on behalf of Tenant represent and warrant to Landlord that: They have the authority to bind Tenant; Tenant is a valid and existing corporation; all things necessary to qualify Tenant to do business in California have been accomplished prior to the date of this Lease; all franchise and other corporate taxes have been paid to the date of this Lease; all forms, reports, fees, and taxes required to be filed or paid by said corporation in compliance with applicable laws will be filed and paid when due.

33.4 Entire Agreement. The entire agreement between the parties hereto is set forth in this Lease, and any agreement hereafter made shall be ineffective to change, modify, alter or discharge it in whole or in part unless such agreement is in writing and signed by both said parties. It is further understood that there are no oral agreements between the parties hereto affecting this Lease, and that this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between said parties or displayed by Landlord to Tenant with respect to the subject matter of this Lease, and none of the same shall be available to interpret or construe this Lease. All negotiations and oral agreements acceptable to both parties hereto have been merged into and are included in this Lease.

33.5 Other Tenancies and Improvements. Landlord reserves the absolute right to effect such other tenancies in the Shopping Center as Landlord shall determine to best promote the interests of the Shopping Center. Landlord may change the shape, size, location, number, and extent of the improvements to any portion of the Shopping Center without the consent of Tenant. Tenant does not rely on the fact nor does Landlord represent that any specific tenant or number of tenants shall during the term of this Lease occupy any space in the Shopping Center.

33.6 Jurisdiction - Construction of Lease. The laws of the State of California shall govern the validity, performance and enforcement of this Lease. Although the printed provisions of this Lease were prepared and drawn by Landlord, this Lease shall not be construed either for or against Landlord or Tenant, but its construction shall be at all times in accord with the general tenor of the language so as to reach a fair and equitable result.

33.7 Non-Waiver - Landlord's Acceptance of Payment. A waiver by either party hereto of any breach or default on the

part of the other party shall not be a waiver of any other breach or default. Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent similar act by Tenant. The acceptance by Landlord of any rental or other payments due hereunder with knowledge of the breach of any of the covenants of this Lease by Tenant shall not be construed as a waiver of any such breach. The acceptance at any time or times by Landlord of any sum less than that which is required to be paid by Tenant shall, unless Landlord specifically agrees otherwise in writing, be deemed to have been received only on account of the obligation for which it is paid, and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in a letter of transmittal.

33.8 Force Majeure. Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, regulations or controls, enemy or hostile governmental action, riot, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the party obligated to perform, shall excuse the performance by such party for a period equal to any such prevention, delay or stoppage except that subject to the provisions of Subsection 13.4. Tenant's obligations to pay rent, additional rent and any other sums or charges pursuant to this Lease shall not be affected thereby so long as the Premises have been delivered to Tenant.

33.9 "Landlord" - Release. The term "Landlord" as used in this Lease, so far as covenants or obligations on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners at the time in question of the Premises; and in the event of any transfer or transfers of title thereto, Landlord herein named (and in case of any subsequent transfers or conveyances, the then grantor) shall be automatically freed and relieved from and after the date of such transfer or conveyance of all liability as respects the performance of any covenants or obligations hereunder of the part of Landlord to be performed thereafter.

33.10 Relocation. Following the first three lease years of the term of this Lease Landlord shall have the right to relocate the Demised Premises to another location in the Shopping Center of approximately the same size as the original Premises described herein, upon thirty (30) days written notice provided that the cost of relocating Tenant's fixtures and equipment and constructing those leasehold improvements required by Tenant's business shall be borne solely by Landlord. All other costs, if any, shall be borne by Tenant.

33.11 Financial Statements. Upon Landlord's written request, Tenant shall promptly furnish to Landlord, from time to time, financial statements reflecting Tenant's current financial condition.

33.12 Time for Performance. Time is of the essence with respect to the performance of each of the covenants and agreements of this Lease.

33.13 Binding Effect. Each and all of the provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and (except as set forth in Subsection 33.9 above and as otherwise specifically provided elsewhere in this Lease), their respective personal representatives, successors and

assigns, subject at all times to all provisions and restrictions elsewhere in this Lease respecting the assignment, transfer, encumbering or subletting of all of any part of the Premises or Tenant's interest in this Lease.

33.14 Submission Not Offer. Submission of this instrument by or on behalf of Landlord for examination or execution by Tenant does not constitute a reservation of or option for Lease, and this instrument shall not be effective as a lease or otherwise until executed and delivered by both Landlord and Tenant.

33.15 Captions. The captions shown in this Lease are for convenience or reference only, and shall not, in any manner, be utilized to construe the scope or the intent of any provisions thereof.

33.16 Recordation. Tenant shall not record this Lease nor any short form memorandum thereof without Landlord's written consent.

33.17 Automatic Termination. In the event that the Rent Commencement Date has not occurred within nine (9) months after the date hereof, this Lease shall terminate and be of no further force and effect.

33.18 Conditions. All agreements herein by Tenant, whether expressed as covenants or conditions, shall be deemed to be conditions for the purpose of this Lease.

33.19 Addendum. An Addendum containing Paragraphs -0- is attached hereto and incorporated herein.

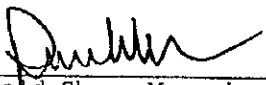
33.20 Number and Gender. Unless some other meaning and intent are apparent from the context, the plural shall include the singular and vice versa; masculine, feminine and neuter words shall be used interchangeably.

33.21 Consent or Approval. Wherever in this Lease the consent or approval of the Landlord is required, unless the provision calling for said consent or approval specifically states that it will not be unreasonably withheld, Landlord may withhold such consent or approval in its absolute and sole discretion.

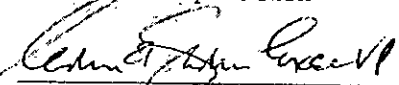
33.22 Imputation. For purposes of this Lease, the negligence, affirmative act or violation of the provisions of this Lease by an employee or agent of Landlord or Tenant, or by a contractor employed by Landlord or Tenant, shall be the negligence, affirmative act or violation of the provisions of this Lease of Landlord or Tenant, as the case may be.

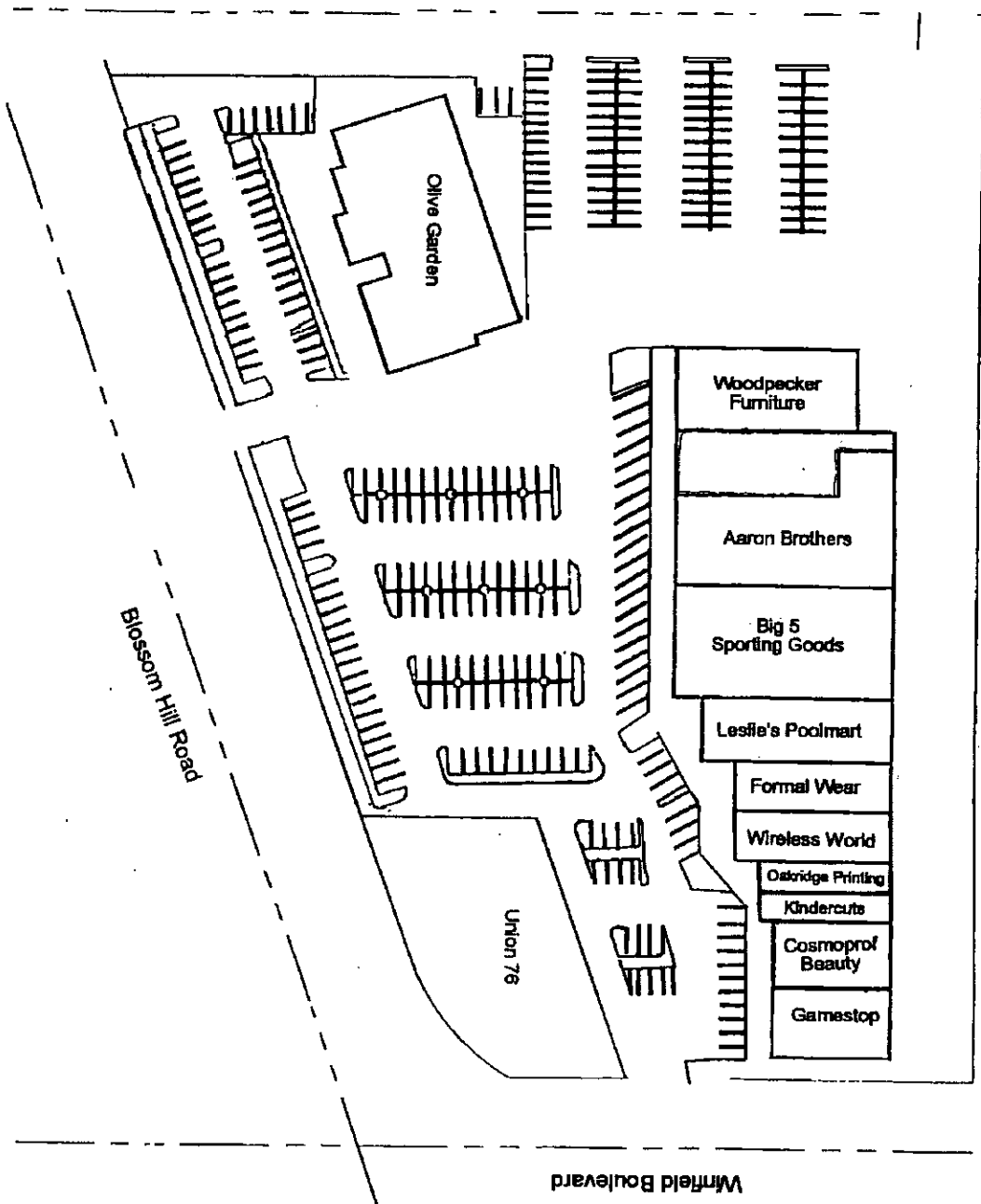
WITNESS the signatures of the parties hereto, this 1 day of March, 2004.

LANDLORD:  
WINFIELD GROUP, a California  
partnership

  
\_\_\_\_\_  
Ronald Sher, Managing General  
Partner of SARM Enterprises, a  
California general partnership,  
General Partner of Winfield  
Group

TENANT:  
JENNIFER CONVERTIBLES, INC.,  
a Delaware corporation

  
\_\_\_\_\_  
Edward Seidner, Vice  
President



## EXHIBIT A

NOTE: This exhibit is diagrammatic and is intended only for the purposes of indicating the demised premises in the Shopping Center and the extent of the Shopping Center development. Except as may be expressly provided to the contrary in the Lease, Landlord reserves the right to eliminate or add to or make changes in size, location or such other changes as may be required from time to time.



DESCRIPTION OF LEASE PARCEL

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE,  
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, MORE PARTICULARLY DES-  
CRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL A AS SHOWN ON THE PARCEL  
MAP RECORDED ON JUNE 10, 1974 IN BOOK 341 OF MAPS AT PAGE 38 IN THE  
COUNTY RECORDER'S OFFICE OF SANTA CLARA COUNTY; THENCE NORTHERLY  
ALONG THE EASTERLY LINE OF WINFIELD BOULEVARD, NORTH 16° 11' 00"  
EAST, 43.00 FEET; THENCE LEAVING SAID EASTERLY LINE, AND RUNNING  
PARALLEL AND 43.00 NORTHERLY OF THE SOUTHERLY LINE OF SAID PARCEL  
A, SOUTH 73° 05' 24" EAST, 310.00 FEET TO THE TRUE POINT OF BEGINNING;  
THENCE CONTINUING ON SAID PARALLEL LINE, SOUTH 73° 05' 24" EAST, 100.00  
FEET; THENCE NORTH 16° 54' 36" EAST, 120.00 FEET; THENCE NORTH 73°  
05' 24" WEST, 100.00 FEET; THENCE SOUTH 16° 54' 36" WEST, 120.00  
FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT B

EXHIBIT C

ATTACHED TO AND MADE PART OF  
JENNIFER CONVERTIBLES  
SHOPPING CENTER LEASE  
AT BLOSSOM HILL CENTER

Tenant accepts Premises and every part thereof (including but not limited to existing electrical and plumbing fixtures and conduits and HVAC) in its "as is" condition, provided, however, Landlord warrants that all building systems are in good working order and that the restroom complies with ADA requirements.

Tenant shall be responsible for the provision and installation of its own furniture, fixtures, equipment, and tenant improvements necessary for a finished store ready for the operation of Tenant's business.

Notwithstanding any other provision hereof, prior to commencement of any tenant improvement work, Tenant shall submit to Landlord detailed plans and specifications of such improvements, and all plans and specifications shall be subject to Landlord's written approval.

Upon written notification to Landlord that Tenant has opened for business from the Premises, verification of mechanics lien releases (if applicable), and copy of Certificate of Occupancy (as may be required), Landlord shall provide a one-time reimbursement to Tenant in an amount of \$35,000.00 within twenty (20) days of such notice. Tenant acknowledges that such monies shall be used solely for improvements to the Premises and will not be used for inventory and/or furniture.

EXHIBIT D  
SIGNAGE CRITERIA

All signage is subject to Landlord's prior written approval.

**EXHIBIT E**

**OPENING AND TERMINATION DATE DECLARATION**

LANDLORD: WINFIELD GROUP

TENANT: JENNIFER CONVERTIBLES, INC.

PROJECT: BLOSSOM HILL CENTER

LEASE DATE: \_\_\_\_\_

PREMISES NUMBER: 922-B Blossom Hill Road, San Jose, CA 95123

SQUARE FOOTAGE: 3,500

Landlord and Tenant acknowledge and agree that the Tenant has taken possession of the Premises on \_\_\_\_\_; the Rent Commencement Date of the above-referenced lease is \_\_\_\_\_; and the Termination Date of the lease is \_\_\_\_\_.

LANDLORD:

TENANT:

\_\_\_\_\_

\_\_\_\_\_

Name:

Title:

Date:

MICHAEL W. MALTER  
HEINZ BINDER  
ROBERT G. HARRIS  
JULIE H. ROME-BANKS  
DAVID B. RAO  
WENDY W. SMITH  
ROYA SHAKOORI  
RYAN M. PENHALLEGON  
KRISTINA A. PARSON

NAN L. CORBER  
PARALEGAL

**BINDER & MALTER, LLP**  
ATTORNEYS AT LAW

2775 PARK AVENUE  
SANTA CLARA, CA 95050

Please reply to:  
P.O. Box 28461  
San Jose, CA 95159-8461

TELEPHONE 408-295-1700  
FACSIMILE 408-295-1531

October 19, 2010

VIA FEDEX  
BMC Group, Inc.  
Atten: Jennifer Convertibles Claims Processing  
18750 Lake Drive East  
Chanhassen, MN 55317

Re: In re Jennifer Convertibles  
Chapter 11; Case No. 10-13779

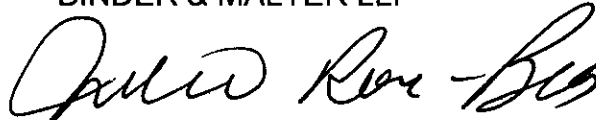
Dear Sir or Madam:

Enclosed please find an original and two copies of a Proof of Claim on behalf of creditor Winfield Group to be filed in this bankruptcy case.

Please return a file marked copy of the Proof of Claim to our office in the enclosed pre-paid Fedex return envelope.

Very truly yours,

BINDER & MALTER LLP



JULIE H. ROME-BANKS  
Attorney at Law

encls.

JHR;F:\Clients\The Winfield Group re Jennifer Convertibles\Corr\BMC Group Lt 101910.wpd